

# **EXHIBIT 3**

**Redacted Version of  
Document Sought to  
be Sealed**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

- - - - - x

CHASOM BROWN; MARIA NGUYEN; WILLIAM  
BYATT; JEREMY DAVIS; and CHRISTOPHER  
CASTILLO, individually and on behalf  
of all other similarly situated,

Plaintiffs,

No. 5:20-cv-03664-LHK

-against-

GOOGLE LLC,

Defendant.

- - - - - x

Zoom video conference deposition of  
RORY McCLELLAND, taken pursuant to  
notice, was held remotely, commencing  
February 18, 2022, 5:30 a.m. Eastern  
Standard Time, before Leslie Fagin, a  
Stenographic Court Reporter and Notary  
Public in the State of New York.

- - -

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1 APPEARANCES:  
2 (All Parties Present Via Zoom )

3  
4 BOIES SCHILLER & FLEXNER LLP  
5 Attorneys for Plaintiffs  
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7 San Francisco, California 94104  
8 BY: MARK MAO, ESQUIRE  
9 ROSANNA BAEZA, ESQUIRE

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11 Attorneys for Defendant  
12 51 Madison Avenue, 22nd Floor  
13 New York, New York 10010  
14 BY: JOMAIRE A CRAWFORD, ESQUIRE  
15 CARL SPILLY, ESQUIRE

16 BAILEY GLASSER  
17 Attorneys for Witness  
18 209 Capitol Street  
19 Charleston, West Virginia 25301  
20 BY: BENJAMIN L BAILEY, ESQUIRE  
21 ELLIOTT MCGRAW, ESQUIRE

22 ALSO PRESENT:

23 LESLEY WEAVER, ESQUIRE  
24 BLEICHMAR FONTI  
25 For the Calhoun Plaintiffs

VANESSA WHEELER, Exhibit Tech  
Magna Legal Services

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1 R. McClelland  
2 RORY MC CLELLAND, called as a  
3 witness, having been duly sworn by a  
4 Notary Public, was examined and testified  
5 as follows:

6 MS. BAEZA: Good morning this is  
7 Rosanna Baeza on behalf of plaintiffs  
8 and with me is Mark Mao, also from Boies  
9 Schiller Flexner.

10 MS. WEAVER: Good morning. Lesley  
11 Weaver, Bleichmar Fonti on behalf of the  
12 Calhoun plaintiffs.

13 MS. CRAWFORD: Jomaire Crawford  
14 from Quinn Emanuel Urquhart for the  
15 defendant, Google LLC. I am joined this  
16 morning by my colleague, Carl Spilly.

17 MR. BAILEY: I'm Ben Bailey with  
18 Bailey Glasser and my colleague, Elliott  
19 McGraw is on. We represent the witness.

20 Even if one steps out, there will  
21 always be one of us here.

22 EXAMINATION BY

23 MS. BAEZA:

24 Q. Good morning. My name is Rosanna  
25 Baeza and I represent the plaintiffs in this

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1 R. McClelland  
2 case.

3 Can you state your full name for  
4 the record?

5 A. My full name is Rory James  
6 McClelland.

7 Q. Before we begin, where are you  
8 located presently?

9 A. I'm in London, United Kingdom.

10 Q. Where exactly in London?

11 A. In the Boies Schiller office. The  
12 address is No. 5 New Street Square.

13 Q. Is there anybody in the room with  
14 you today?

15 A. No, there is not.

16 Q. Mr. McClelland, have you ever  
17 testified under oath before?

18 A. No, I haven't.

19 Q. Do you understand that you are  
20 under the same oath today as if you were in a  
21 courtroom?

22 A. I do.

23 Q. I'm going to assume that you  
24 understand the questions that I ask you,  
25 unless you tell me that you don't understand

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1 R. McClelland  
2 them, is that fair?

3 A. I understand, yes.

4 Q. Is there anything that would  
5 prevent you from testifying truthfully today?

6 A. No, there is nothing.

7 Q. If at any time you need to take a  
8 break during the deposition, will you let me  
9 know?

10 A. I will.

11 Q. Do you have an undergraduate  
12 degree?

13 A. I do, yes.

14 Q. What did you study?

15 A. Electronic and computer  
16 engineering.

17 Q. Where did you earn your  
18 undergraduate degree?

19 A. At the University of Birmingham.

20 Q. When did you graduate from the  
21 University of Birmingham?

22 A. September 2001.

23 Q. Do you have a graduate degree?

24 A. I do. I have a master's in  
25 computer science from the same university.

2 (Pages 2 to 5)

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1 R. McClelland  
2 travel to another location in order to give  
3 testimony in connection with this matter or  
4 was it presented as something that you were  
5 doing voluntarily or at your own election?

6 A. The whole thing was at my election  
7 and voluntarily, but if I did want to do it,  
8 the interpretation I took away was that I had  
9 to do it outside of Germany.

10 Q. During the course of that  
11 conversation, were you made aware that you,  
12 as a German resident, were not obligated or  
13 were not under the subpoena power of the  
14 United States Courts, did that come up in  
15 your conversation at all?

16 A. I don't believe it did.

17 Q. But, nonetheless, it appears that  
18 you were asked to give testimony and you  
19 agreed to fly to London for that?

20 A. That is right, yeah.

21 Q. Did you have any other  
22 conversations with either plaintiffs' counsel  
23 at Boies Schiller or any of the other  
24 plaintiffs that are present -- did you have  
25 any other conversations, I don't know the one

1 R. McClelland  
2 you just mentioned, with Mr. Richardson?

3 MS. BAEZA: Objection, form, vague.

4 A. There was an email thread, if I  
5 remember correctly, around the logistics part  
6 of it, but, basically, the conversation moved  
7 at that stage.

8 Q. Was the email conversation, the one  
9 you just mentioned -- actually, do you recall  
10 the timing of that email exchange and whether  
11 it was in the latter portion of 2021 or  
12 whether it was in early 2022?

13 A. May I check?

14 MS. BAEZA: Objection, form,  
15 mischaracterizes testimony.

16 Q. Yes, please.

17 A. It was early 2022, if I remember  
18 correctly.

19 Q. If you needed to check, obviously,  
20 feel free to ensure the accuracy of your  
21 testimony.

22 A. I'm checking now.

23 So I have the email deleted here.  
24 I first reached out on the 27th of December,  
25 the very end of the year, so, apologies, that

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1 R. McClelland  
2 was somewhat incorrect, and the conversation  
3 continued into early January and we moved on  
4 to the logistics part of that around the 7th  
5 of January.

6 Q. That's helpful. Thank you.

7 Outside of the communications or  
8 conversations that you have told me about so  
9 far, any other communications with  
10 plaintiffs' counsel that come to mind?

11 A. No, no others.

12 Q. Did plaintiffs' counsel indicate  
13 that they were going to be referring you to  
14 an attorney who would be representing you in  
15 connection with your deposition?

16 A. I'm not sure referring was the  
17 right word. They recommended one and I was  
18 happy to take their recommendation.

19 Q. Understood.

20 Again, not looking to delve into  
21 privileged conversations that you might have  
22 had with Mr. Bailey, but I'm going to ask at  
23 a high level, do you understand Mr. Bailey to  
24 be charging you in connection with his  
25 representation of you at today's deposition?

1 R. McClelland

2 A. No, the costs are being covered by  
3 the plaintiffs.

4 Q. Was that something promised to you  
5 or suggested to you in any way in connection  
6 with the communications that you had with  
7 plaintiffs' counsel?

8 A. It was made clear from the  
9 beginning that they would cover those costs.

10 Q. Any other costs that either they  
11 offered to cover or that you understood would  
12 be covered in connection with your testimony  
13 today?

14 A. Yes, they offered to cover the  
15 travel costs for being here in London.

16 Q. Is it safe to assume those costs,  
17 since you are currently residing in Berlin,  
18 includes a flight and perhaps overnight  
19 accommodations?

20 A. That's right, flight, hotel, Covid  
21 tests, the usual things nowadays, like a  
22 business trip.

23 Q. Understood. I haven't traveled in  
24 a bit, but that's an important context.

25 Any other expenses that you think

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1 R. McClelland  
2 might either were offered to be covered by  
3 plaintiffs' counsel that you haven't  
4 mentioned already?  
5 A. Just the travel costs as per a  
6 usual business trip.  
7 Q. And is your expectation to submit  
8 those receipts for your travel and your  
9 lodging to plaintiffs' counsel upon  
10 completion of your services today?  
11 A. That is right.  
12 MS. BAEZA: Objection, form, vague.  
13 Q. All right. I think that I am going  
14 to transition from this line of questioning.  
15 I may have one or two more questions about  
16 that later on, but, for now, I want to move  
17 on to some of the questions and some of the  
18 subjects that were covered by Ms. Baeza  
19 regarding your role as PM, product manager,  
20 and lead for Chrome browser privacy.  
21 Is that okay with you?  
22 A. It is, yeah.  
23 Q. Do you remember being asked about  
24 [REDACTED]?  
25 A. I do, yes.

1 R. McClelland  
2 Q. I believe you testified that you  
3 were the product manager that led this  
4 change, is that right?  
5 A. That's right, yes.  
6 Q. Was [REDACTED] implemented?  
7 A. Yes, it was. [REDACTED]  
8 [REDACTED] was  
9 implemented.  
10 Q. In your review, did [REDACTED]  
11 interviews a new feature to users as opposed  
12 to elevating or making more pronounced a  
13 feature that already existed in the Chrome  
14 browser?  
15 A. It was a new feature, although the  
16 ability to block third party cookies has been  
17 in Chrome since the beginning. [REDACTED]  
18 [REDACTED].  
19 [REDACTED].  
20 Q. Can you tell me what the state of  
21 affairs was prior to [REDACTED], as it  
22 relates to blocking third party cookies?  
23 A. The default state was [REDACTED]  
24 [REDACTED]  
25 [REDACTED] and users to choose to block

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1 R. McClelland  
2 them if they so wish.  
3 Q. I'm now going to introduce what  
4 I've previously marked as tab No. 1. It's a  
5 document that has been produced in connection  
6 with this litigation, Mr. McClelland.  
7 It bears the Bates stamp  
8 GOOG-CABR-05145880.  
9 (Exhibit 18, documents beginning  
10 with Bates stamp No. GOOG-CABR-05145880,  
11 marked for identification.)  
12 Q. I'm just going to ask that you take  
13 a minute to look through this document.  
14 I'm going to be focusing in on  
15 first the page, 883.  
16 A. Sorry, the name of the document the  
17 file name T-01?  
18 Q. It should be, let's see -- yes, I  
19 think that that's what it appears as on the  
20 screen. I think we are going to continue in  
21 terms of the continuity of the exhibit  
22 numbers, this would be Exhibit No. 18. If  
23 we could change that, either on the screen or  
24 on the back end, I think that that will help  
25 keep everything intact, but, yes, T-01 is the

1 R. McClelland  
2 reference exhibit.  
3 A. Thank you. The page number again,  
4 please?  
5 Q. It ends in 883. That's the first  
6 slide I'm going to ask about.  
7 One thing we can do, if you would  
8 like to read up until that point, I will ask  
9 questions and if you need additional context  
10 in the document, I'm happy to obviously give  
11 you time to peruse the rest of it, however  
12 you wish to proceed is fine by me.  
13 A. Thank you.  
14 I've read the first few slides. I  
15 have the general idea of the document.  
16 Q. If you turn to -- if you have the  
17 Bates number ending in 883 in front of you.  
18 MS. CRAWFORD: If we can call that  
19 up on the screen, please.  
20 Q. I believe in the second paragraph  
21 here, do you see where there is a reference  
22 to Chrome having an existing set of privacy  
23 features that allows blocking third party  
24 cookies manually?  
25 A. I do, yes.

59 (Pages 230 to 233)

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1 R. McClelland  
2 unreliable, would you have any basis to  
3 dispute his conclusion?

4 A. I'm not really sufficiently  
5 technical to have a strong view there,  
6 however, it was known that this was  
7 notoriously difficult to do and finicky and,  
8 suddenly took a lot of time before we got a  
9 model that we had confidence in.

10 Q. Can you explain for us why that is,  
11 why it was tricky or finicky?

12 A. Well, there are different ways of  
13 measuring Incognito usage. Simple sessions,  
14 number of pages, an understanding of what is  
15 important, different pages have different  
16 number of ad impressions on them, some pages  
17 have none at all, some have three or four ads  
18 and that's not represented in the simple page  
19 load in Incognito metric, so where you are  
20 trying to find a model that was the best  
21 proxy to revenue impact was quite hard.  
22 Beyond that, the technical reasons, too  
23 technical for me, I'm afraid.

24 Q. That's okay.

25 Now, I would like to ask a couple

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1 R. McClelland  
2 of questions about joinability and the logs  
3 that you were asked about and you testified  
4 about.

5 Do you remember counsel asking you  
6 questions regarding segmentation of regular  
7 browsing mode profiles and Incognito mode  
8 profiles?

9 A. Yes, I do.

10 Q. If we can, let's introduce tab 6,  
11 which is a document that was produced by  
12 Google during discovery. It bears the Bates  
13 No. GOOG-CABR-00892455. It should be up in  
14 front of you as T-06.

15 A. I'm looking at it now.

16 Q. Appreciate that if you could take a  
17 look at it and just let me know whenever you  
18 are done?

19 (Exhibit 23, documents beginning  
20 with Bates stamp No. GOOG-CABR-00892455,  
21 marked for identification.)

22 THE EXHIBIT TECH: Just let me know  
23 when you need me to turn the page.

24 THE WITNESS: I'm looking at the  
25 actual document, so I'm fine.

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1 R. McClelland  
2 A. I have read the document. Thank  
3 you.

4 Q. Are you familiar with this document  
5 or the general policy that this document  
6 describes?

7 A. Yes, I am.

8 Q. Can you tell us what this is?

9 A. It defines how data should be  
10 treated by Google employees, and particularly  
11 how certain types of data should be handled  
12 with more care and certain things that must  
13 never happen. It's a data usage policy  
14 document.

15 Q. Did you consult this policy in  
16 connection with your work for Google?

17 A. Certainly. This document was used  
18 regularly.

19 Q. How did you -- how was this  
20 document used regularly?

21 A. Both in terms of how we would use  
22 data in our own features, but would also be  
23 referenced when we were quality auditing  
24 other feature teams features, perhaps  
25 pointing to something in this just to draw

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1 R. McClelland  
2 their attention to it.

3 Q. If you could please scroll to the  
4 page that ends in 455 and I'm looking  
5 specifically at the Go/Loss-Usage header.

6 Do you see where that appears?

7 A. Page 455?

8 Q. That's right. First page -- it's  
9 at the very top of the page.

10 A. I see. Yes, I skipped over it.

11 Q. If we could call that up on the  
12 screen.

13 Do you mind rereading this sentence  
14 and letting me know when you are done?

15 A. I have read it.

16 Q. Based on your understanding of this  
17 portion of the document, do you understand  
18 that Google prohibits reidentifying any  
19 individuals using anonymous or synonymous  
20 data?

21 A. I do, but that doesn't seem to  
22 apply to the particular bit of tech shown,  
23 but, yes, I do.

24 Q. If we get to a portion of the  
25 document where there is support for that

70 (Pages 274 to 277)

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Page 279

1 R. McClelland  
2 understanding, can you just call it out and  
3 let me know?

4 A. Sure.

5 Q. Google prohibits, based on your  
6 understanding of this policy, correlating  
7 authenticated and non-authenticated  
8 information, is that right?

9 A. That is right, yes.

10 Q. Can you explain why that is?

11 A. An example would be in Incognito  
12 mode, again, a user who signed in in regular  
13 mode, one use of Incognito may be to  
14 temporarily present as a non-signed-in user  
15 and, therefore, it's important, from the  
16 user's point of view, they have chosen to do  
17 that to segment their browsing activity and,  
18 therefore, it is important that Google does  
19 not attempt to rejoin that data.

20 Q. Are you aware of Google rejoining  
21 that data?

22 A. No, as far as I am aware, Google  
23 never did that.

24 Q. Why is that?

25 A. Because it would be a breach of

1 R. McClelland  
2 user trust, potential PR incident.

3 Q. Google also prohibits  
4 fingerprinting users for the purpose of  
5 associating their activity over time or  
6 across contexts, is that right?

7 MS. BAEZA: Objection to form, lack  
8 of foundation, compound.

9 A. Yes, that is my understanding, that  
10 fingerprinting was also not allowed to be  
11 used.

12 Q. Is your understanding of why it was  
13 not allowed to be used any different than the  
14 explanation you just provided for why Google  
15 doesn't correlate authenticated and  
16 non-authenticated data?

17 A. Exactly, same reasons, user trust  
18 perception, PR.

19 Q. In the context of Incognito mode  
20 for Chrome specifically, is it also true that  
21 Google prohibits joining authenticated  
22 information with non-authenticated data?

23 A. Exactly, the policy still applies  
24 for Incognito mode.

25 Q. If a user opens an Incognito window

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1 R. McClelland  
2 and does not log into a Google account, the  
3 information from their Incognito browsing  
4 session would be considered unauthenticated,  
5 is that right?

6 A. Not necessarily a user. There is  
7 nothing to prevent a user from signing into  
8 to a regular account within Incognito mode,  
9 upon which they would then be authenticated,  
10 but, by default, when you first launch an  
11 Incognito window, you would be signed out of  
12 all Google services and, therefore,  
13 unauthenticated.

14 Q. If the user in that Incognito  
15 session does not log in at all to any Google  
16 account, is the information from that  
17 browsing session unauthenticated?

18 A. That is right, it's  
19 unauthenticated.

20 Q. And Google team members, would you  
21 agree, are tasked with preventing the joining  
22 of data from non-Incognito browsing instances  
23 with Incognito browsing instances?

24 A. Tasked with preventing, my  
25 understanding more that it was prohibited, it

1 R. McClelland  
2 wasn't allowed. Whether there were efforts  
3 to actually make that harder, I don't know or  
4 not, but my understanding of the policy was  
5 that as employees, we must never do that,  
6 must never endeavor to do that.

7 Q. Are you aware of any instance where  
8 you endeavored to do that or anyone who  
9 reported to you?

10 A. No.

11 MS. BAEZA: Objection to form,  
12 compound, asked and answered.

13 A. No, I am not aware of any incident  
14 where that was tried.

15 Q. Were you, in connection with your  
16 work as Chrome browser privacy manager,  
17 responsible for enforcing this policy?

18 A. No, that was outside of my  
19 responsibilities. There were teams who were  
20 more responsible for it, but everyone had a  
21 responsibility to adhere to the policy.

22 Q. Would you say you did that in  
23 connection with your employment at Google?

24 A. Yes, that's right.

25 Q. I would now like to introduce tab

71 (Pages 278 to 281)

1  
2 ---  
3 EXHIBIT  
4 ---

EXHIBIT	PAGE
Exhibit 13 Documents bearing Bates Stamp No. GOOG-CABR-00173728 through GOOG-CABR-00173735	189
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3 EXHIBIT  
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1  
2 ---  
3 DEPOSITION SUPPORT INDEX  
4 ---

5 Direction to Witness Not to Answer  
6 Page Line Page Line Page Line  
7 None

8 Request for Production of Documents  
9 Page Line Page Line Page Line  
10 None

11 Stipulations  
12 Page Line Page Line Page Line  
13 None

14 Questions Marked  
15 Page Line Page Line Page Line  
16 None

17 To Be Filled In  
18 Page Line Page Line Page Line  
19 None

1  
2  
3 CERTIFICATE

4 I HEREBY CERTIFY that the witness,  
5 RORY McCLELLAND, was duly sworn by me and  
6 that the deposition is a true record of the  
7 testimony given by the witness.

8 \_\_\_\_\_  
9 Leslie Fagin,  
10 Registered Professional Reporter  
11 Dated: February 18, 2022

12 (The foregoing certification of  
13 this transcript does not apply to any  
14 reproduction of the same by any means, unless  
15 under the direct control and/or supervision  
16 of the certifying reporter.)  
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